

NO. 48963-5-II

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION II

STATE OF WASHINGTON, Respondent

v.

LAFE WILLIAM HOTCHKISS II, Appellant

FROM THE SUPERIOR COURT FOR CLARK COUNTY
CLARK COUNTY SUPERIOR COURT CAUSE NO.14-1-02055-4

BRIEF OF RESPONDENT

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RESPONSE TO ASSIGNMENTS OF ERROR

- I. The trial court properly admitted Hotchkiss's confession, as the State presented sufficient evidence to establish the corpus of the crime of Possession of Methamphetamine with intent to deliver.**

STATEMENT OF THE CASE

Hotchkiss was charged with Possession of Heroin and Possession of Methamphetamine with intent to deliver. CP 18-19. After proceeding to a bench trial, Hotchkiss was found guilty of both counts and was sentenced within the standard range. CP 238. The trial court also found the offense was committed within 1,000 feet of a school bus stop. RP 362. This appeal timely follows.

At trial Deputy Brian Kessel of the Clark County Sheriff's Office testified he was working with the drug task force in October 2014. RP 262-63. On October 3, 2014, Deputy Kessel and other deputies executed a search warrant on the residence located at 1004 SE 145th Court in Vancouver, Washington. RP 263. Deputies learned Lafe Hotchkiss, II (hereafter 'Hotchkiss') was not at his residence, but at his place of employment, Peninsula Glass, also located in Clark County, Washington. RP 264. Deputies responded to Peninsula Glass and made contact with Hotchkiss. RP 265-66.

Deputy Kessel informed Hotchkiss that he was under arrest and that he had a search warrant for his residence. RP 266. Deputies searched Hotchkiss's jacket and found suspected heroin inside. RP 269, 300. After that, the deputies returned with Hotchkiss to Hotchkiss's residence to finish executing the search warrant. RP 301.

While at the residence, Deputy Kessel interviewed Hotchkiss in a vehicle outside. RP 271. Hotchkiss told Deputy Kessel that he had an "8-ball" of methamphetamine in his safe. RP 271. Deputy Kessel testified that an "8-ball" is approximately 3.8 grams (one-eighth of an ounce) of methamphetamine. RP 271. Hotchkiss stated that he breaks the "8-ball" down and has about ten customers. RP 272. He stated he obtains one "8-ball" every day. RP 272. Hotchkiss also told Deputy Kessel that he does not use heroin and the heroin found in his jacket was given to him by someone who owed him money. RP 272. Hotchkiss also gave Deputy Kessel the combination to the safe located in his bedroom in the residence. RP 271.

Sergeant Pat Moore worked with the drug task force to execute the search warrant on Hotchkiss's home on October 3, 2014. RP 297-98. During the search, Sergeant Moore searched Hotchkiss's safe. RP 301-02. There he found \$2,150 in cash, a cell phone, and a quantity of suspected methamphetamine. RP 302-04. The methamphetamine found totaled 8.1

grams. RP 355. Sergeant Moore further testified that in his training and experience a typical methamphetamine dose is 0.2 to 0.4 grams. RP 336-37. He indicated one gram of methamphetamine could be anywhere between 1 and 5 doses depending on the user. RP 337.

The parties stipulated that the substance found in the safe weighed 8.1 grams and tested positive for methamphetamine. RP 294-95.

After the State presented its evidence at trial, Hotchkiss argued that corpus delicti prevented admission of the defendant's statements. RP 309. The trial court found there was sufficient evidence to prove the corpus of Hotchkiss's intent to deliver and thus his confession was properly admitted. RP 360. The trial court specifically found that the amount of methamphetamine was approximately 20 to 40 doses, and the presence of it and \$2,150 in cash was sufficient to prove the corpus of the crime. RP 258-61.

ARGUMENT

Hotchkiss argues the trial court erred in admitting the statements he made to police officers under the corpus delicti rule. Specifically, Hotchkiss alleges that the possession of 8.1 grams of methamphetamine, located in a safe in his bedroom, along with \$2,150 in cash, was not sufficient to establish a prima facie case of possession with intent to

deliver. The trial court properly found Hotchkiss's confession was admissible because the facts that Hotchkiss possessed approximately 20 to 40 doses of methamphetamine, located in a safe, and \$2,150 in cash, were sufficient to establish the corpus of the crime. Hotchkiss was properly convicted of Possession of Methamphetamine with the intent to deliver and the trial court should be affirmed.

A defendant's confession is inadmissible unless the State presents independent evidence of the "corpus delicti" of the crime to corroborate the defendant's confession. *See State v. Brockob*, 159 Wn.2d 311, 327-28, 150 P.3d 59 (2006). Corpus delicti means "the body of the crime." *State v. Aten*, 130 Wn.2d 640, 655, 927 P.2d 210 (1996) (quoting McCormick on Evidence sec 145, at 227 (John W. Strong ed., 4th ed. 1992)). The doctrine of "corpus delicti" refers to the evidentiary requirement that the State present sufficient evidence to support the inference that there has been a criminal act, independent of a defendant's inculpatory statements. *See id.* at 655-56. This means that the State "must present evidence independent of the incriminating statement that the crime a defendant *described in the statement* actually occurred." *Brockob*, 159 Wn.2d at 328 (emphasis original).

In determining whether sufficient evidence was admitted to satisfy corpus delicti, an appellate court reviews the evidence in the light most

favorable to the State. *Aten*, 130 Wn.2d at 658. The independent evidence does not need to be sufficient, standing alone, to support a conviction. *Id.* at 656. Further, this evidence need not establish the corpus of the crime beyond a reasonable doubt, or even by a preponderance of the evidence. *Id.* However, the independent evidence must corroborate or confirm the crime described in the defendant's statement. *Id.* Such corroboration is present if the evidence supports a "logical and reasonable inference" of the elements of the crime sought to be proved. *State v. Vangerpen*, 125 Wn.2d 782, 796, 888 P.2d 1177 (1995). This evidence also must be consistent with guilt and inconsistent with innocence. *State v. Lung*, 70 Wn.2d 365, 372, 423 P.2d 72 (1967). When the independent evidence supports both a reasonable and logical inference of guilt and innocence, the evidence is not sufficient to corroborate a defendant's confession. *Aten*, 130 Wn.2d at 660.

This Court reviews a trial court's corpus delicti determination de novo. *State v. Pineda*, 99 Wn.App. 65, 77-78, 992 P.2d 525 (2000). In assessing the sufficiency of the State's corpus delicti evidence, the reviewing court assumes the truth of the State's evidence and views all reasonable inferences in the light most favorable to the State. *Aten*, 130 Wn.2d at 658.

As applied to this case, the independent evidence presented by the State must have supported an inference that the crime of possession of methamphetamine with the intent to deliver was committed. *See Brockob*, 159 Wn.2d at 329-30. Hotchkiss argues the evidence presented by the State was legally insufficient. Generally, possession of a controlled substance, by itself, is not sufficient to establish prima facie proof of intent to deliver. *State v. Whalen*, 131 Wn.App. 58, 63, 126 P.3d 55 (2005). However, only “one additional factor, suggestive of intent, must be present” to sufficiently prove the corpus of the crime, thus allowing a confession to be admitted. *Id.* (citing *State v. McPherson*, 111 Wn.App. 747, 759, 46 P.3d 284 (2002)). In Hotchkiss’s case, the trial court correctly found the state presented sufficient evidence of the corpus of Possession of Methamphetamine with intent to deliver when it found the State showed the defendant possessed 8.1 grams of methamphetamine in a safe along with \$2,150 in cash.

Hotchkiss relies in part on *State v. Cobelli*, 56 Wn.App. 921, 788 P.2d 1081 (1989) to support his argument that the trial court erred in admitting his confession. However, *Cobelli* is distinguishable from the facts of Hotchkiss’s case. In *Cobelli*, police officers saw the defendant engaged in a series of short conversations with several clusters of people in a known high-drug area. *Cobelli*, 56 Wn.App. at 922. Upon arrest,

police found 1.4 grams of marijuana on the defendant, in several baggies. *Id.* at 923. The defendant there confessed to having sold two baggies of marijuana. *Id.* On appeal, the Court held the State presented insufficient evidence of the corpus delicti of intent to deliver because the circumstances were no more indicative of an intent to deliver than they were for simple possession. *Id.* at 925. The State presented more evidence of the corpus of Hotchkiss's intent to deliver than the State did in *Cobelli*.

In fact, Hotchkiss's case contains one thing the *Cobelli* court specifically stated would have been sufficient to raise an inference of intent to deliver: a significant amount of money. *See Cobelli*, 56 Wn.App. at 924. There the Court stated that "the record in this case lacks the type of circumstantial evidence often found to raise the inference of an intent to deliver, such as the observation of an exchange or *possession of significant amounts of drugs or money*." *Id.* (emphasis added). In fact, in *State v. Hagler*, 74 Wn.App. 232, 872 P.2d 85 (1994), in evaluating sufficiency of the evidence to prove possession with intent to deliver, this Court found that possession of a quantity of cocaine *and* \$342 cash was sufficient to lead to a reasonable inference that the possession was with the intent to deliver. *Hagler*, 74 Wn.App. at 236-37. Specifically the Court stated, "[t]he inference from that much cash provided circumstantial evidence for

the trial court to weigh in deciding that the State had met its burden of proof.” *Id.* at 236.

Additionally, in *State v. Campos*, this Court found the possession of a large amount of cocaine and \$1,750 in cash constituted sufficient evidence to prove possession with intent to deliver. *State v. Campos*, 100 Wn.App. 218, 224, 998 P.2d 893 (2000). Specifically the Court found that the cash “qualifie[d] as an additional factor showing intent....” *Id.* Like the defendants in *Hagler, supra* and *Campos, supra*, Hotchkiss not only possessed a controlled substance but a large sum of cash.

It is evident from case law that a large amount of cash along with possession of an illegal substance constitutes sufficient evidence of possession with the intent to deliver. In *State v. O’Connor*, 155 Wn.App. 282, 229 P.3d 880 (2010), the Court specifically held that “[a]t least one additional fact must exist [under a sufficiency of the evidence analysis], such as a large amount of cash or sale paraphernalia, suggesting an intent to deliver.” *O’Connor*, 155 Wn.App. at 290 (citing *Hagler*, 74 Wn.App. at 236). Hotchkiss argues that his possession of cash is subject to innocent explanation and therefore cannot be used as evidence to establish the corpus of a crime. However, “evidence establishing the corpus delicti need not exclude every reasonable hypothesis consistent with the crime not having occurred.” *State v. Vangerpen*, 71 Wn.App. 94, 99, 856 P.2d 1106

(1993) (citing *Bremerton v. Corbett*, 106 Wn.2d 569, 578, 723 P.2d 1135 (1986)). The State need not show an innocent explanation is presumptively excluded when the evidence supports a logical and reasonable deduction that a crime was committed. “Instead, the court must examine the evidence in the light most favorable to the State, assuming the truth of the evidence and all reasonable inferences therefrom....” *Id.* at 100 (citing *Corbett*, 106 Wn.2d at 571). In applying this standard, the trial court correctly found Hotchkiss’s confession was admissible as the State had presented sufficient evidence that he possessed methamphetamine with the intent to deliver.

The independent direct and circumstantial evidence in this case leads to a reasonable and logical inference that Hotchkiss possessed methamphetamine with the intent to deliver. Because the independent corroborating evidence supports the inference that he intended to deliver the methamphetamine, Hotchkiss’s statements were admissible. Hotchkiss’s claim that there was insufficient evidence to satisfy the corpus delicti rule fails. The trial court should be affirmed.

CONCLUSION


The trial court properly admitted Hotchkiss’s confession at trial as the State established the corpus delicti of the crime of Possession of

Methamphetamine with the intent to deliver. The trial court should be affirmed.

DATED this 21st day of February 2017.

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